

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**



**ORIGINAL**

**74-1750**

B  
P/S

**United States Court of Appeals**

**For the Second Circuit.**

**SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff-Appellee,**

**-against-**

**NORTH AMERICAN RESEARCH AND DEVELOPMENT CORP.  
EDWARD WHITE and ALFRED BLUMBERG,  
Defendants-Appellants**



**REPLY BRIEF FOR APPELLANT**

**ALFRED BLUMBERG**

**Pro Se**

**150 Fifth Avenue, Suite 737  
New York, New York 10011**

5

## TABLE OF CONTENTS

	Page
Counter Counterstatement of Issues Presented .....	1
Objections to the Counterstatement of the Case .....	3
Counterstatement of Facts .....	4
Counterstatement to the Argument .....	7
Conclusion .....	16

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

NOS. 74-1750 & 74-1831

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff-Appellee

-against-

North American Research & Development Corp.,  
Et Al.,

Defendants

NORTH AMERICAN RESEARCH & DEVELOPMENT CORP.,  
EDWARD WHITE & ALFRED BLUMBERG

Defendants-Appellants.

---

On appeal from the United States District  
Court for the Southern District of New York

---

BRIEF IN OPPOSITION TO THE BRIEF OF THE  
SECURITIES & EXCHANGE COMMISSION,  
APPELLANT BLUMBERG

---

COUNTER COUNTERSTATEMENT OF ISSUES PRESENTED

1. This defendant denies that the hearing before former district court Judge Mansfield was substantial enough to conclude that the position of the Securities & Exchange Commission as taken; that this defendant was in a position to have objected or question witnesses. This defendant therefore objects to the position and cites that at the hearing more than 40 defendants were involved, and the hearing lasted about thirty five courtroom hours, therefore this defendant along with most of the remaining never fully participated.

The defendant was aware of Rule 65, and until May, 1973 when Judge Weinfeld signed the order was unaware that the record of the Mansfield Hearing would be used. After the Weinfeld order it was still reasonable to assume that parts of the record dealing with this defendant would be supplied to the Court, and this defendant would have the right to object.

If the SEC had made available its witnesses against this defendant, this defendant would have had the opportunity to cross examine the witness. Failing to provide for this at the Weinfeld trial, the defendant was not in a position, although Deitz had told Judge Mansfield that he would present witnesses and additional evidence. Since the SEC never presented its case before Judge Weinfeld as to the Progress Report, this defendant had no opportunity to respond. The defendant had no way to cross examination the complaint, as the SEC was not in a position to recall the Author, Jaegerman. Therefore, this defendant believes the only solution would have been a de novo trial before permanent relief should have been granted.

This defendant denies that he sold unregistered securities in a fraudulent manner. In view of the facts adduced at the trial; that this defendant was active in the securities industry for over 10 years prior to NARD, and he never sold unregistered securities there was no reason to assume that he knew the securities to be unregistered, including the fact that they were ok'd for listing in the Pink Sheets, a responsible market maker instituted the trading and he had his broker before the transaction check with the transfer agent as testified to. This defendant denies that he solicited numerous buyers

of Nard, and insists that he checked and double checked facts pertaining to NARD. He knew the capitalization, Officers, directors, knew of its asset of the Storrs Process, and that the company was solvent, among other facts.

The defendant testified under OATH on four occasions that he received five copies of the Progress Report, and never used them in any manner whatsoever, except that after the suspension of Nard, 3 copies were given to brokers for their Due Dilligence files, as requested by them, so that they would be able to conform with the requirements of the SEC.

The use of discretionary authority was within the bounds of the authority and not in violation of any law. This defendant therefore denied any violations and none have been shown.

OBJECTIONS TO THE COUNTERSTATEMENT OF THE CASE

The defendant objects to the inclusion of what the previous defendants did, and what happened to them. This defendant has the burden of defending his position, and his alone. In this defense he denies that he solicited purchases for North American shares, and denies that he distributed to any purchasers copies of the Progress Report as issued by the management of North American, of which he was in no way connected, and denies that he violated the law in purchasing shares for the account of others. I am glad that they footnoted (10) that Judge Mansfield denied preliminary relief as to this defendant. In addition Judge Motley also denied them relief as to this defendant. I believe that the SEC is in error that this defendant called no witnesses before Judge Weinfeld. I accept the fact that I was a witness for the SEC, but I was also my witness and I testified in the narrative under Oath for a considerable time. If I acting on my own behalf am not to be considered a witness then

I am shocked as I appeared Pro Se, and the bench did not inform me of harm I was doing in that capacity.

The SeC is aware of the fact that although mailed, the proposed order never reached me in time to appear, but was returned to them. Mr. Deitz served me in April, when I went to his office to inspect the exhibits that he had found in his file cabinet in response to my request.

COUNTERSTATEMENT OF FACTS

As pages 5-13 deal with the actions of others, I did not, and will not comment upon them. Starting on page 14, this defendant is unaware of what Judge Weinfeld found in the Progress Report to be materially false and misleading, but would like to know how he linked this to my actions, as I testified to my indirect involvement with 5 copies of the report and this was not objected to by the SEC. The remainder of page 14 deals with other acts and again I will not comment. Again on page 15, Judge Weinfeld found that I had solicited the purchase of NARD and distributed the Progress Report, and arrived at the conclusion that I caused the purchases of unregistered shares. The defendant denies doing these acts, and therefore disagrees with the conclusion drawn. In addition, Judge Weinfeld states that this defendant played an active and knowing role in aiding and abetting the principals in the distribution of unregistered stock. Having nothing to do with White, from the beginning of my purchases through to the time this stock was suspended, I deny that I was knowing as to any role and fail to see how this was arrived at. The defendant has testified otherwise and I believe Mr. White also testified to this point. Once again, I am at the point where I question the fact pattern and the conclusions reached

in the Decision of Judge Weinfeld; 375 F. Supp at 472.

The defendant would like to inquire of what promotional information he received from White. This defendant read a report several weeks before he became knowledgeable of NARD, and this was an independent report written several years prior by a chemical consultant who was in no way connected with the management of NARD or White. If buying a stock implies it is a good buy, then by implication whom ever is being quoted drew this evaluation. In defense, this defendant denies using this approach. Again we get to the persons who received the Progress Report, again I stand on what has been said, but deny that I used it as a selling tool. Yes, if I were to start my own Broker dealer I would have had some customers, but as I have said that I gave my customers to the Dunhill Salesman, which gave service and advice to my former clients. As they remained friends I am sure that I spoke to them during this period when not connected with any firm. If I had purchased Nard for my own account, I am sure that I would have told them so, if they were told I bought NARD, and I am sure that they placed some reliance in my action. In any event I did not solicitate there purchases. During the period in question, I made my living by buying and selling securities, through brokers and paying commissions to them. At no time did I ever have discretion over the account of my mother, and she along with other former accounts were introduced to Dunhill Securities, as my friend of 15 years was employed as a salesman and had worked with me, and covered these accounts for the past 5 years when I was active in the brokerage business. Footnote 17 is related to Joseph Corby, a vice president of Allen & Company, employed by them

for over 30 years, and in charge of the trading department covering Insurance Securities. In a post hearing proceeding he was shown the account at Dunhill he had opened for his wife, and shown that he had trades in other securities. He was therefore no sure as to whether he gave the order or not. This defendant denies that he gave such order, as he was neither in the office of Dunhill, nor even knew of such an account being opened. There was no pitch on my part, and only a general discussion as to many stocks; as we had lunch on a weekly basis we would talk back and forth, in an exchange of ideas.

Murry Cousins bought 300 shares without my knowledge thru his regular broker, a member of the New York Stock Exchange. He never did business with me, and at some point in time he asked me if I knew a broker who he knew. Some seven years before we had been involved in an underwriting together and he asked me if I had seen him recently. My answer at the time was that I had not, but he was still downtown. I deny that I asked Cousins to buy Nard.

Solomon Schneider was given the opportunity to buy NARD from my initial purchase after it went up. I owed him a favor, and he called Dunhill and sent them his check. Sometime after the purchase he asked me what the company did, and during an example I used the name General Electric, except for his misunderstanding of the example his fact pattern was correct.

In conversation with Corby, I deny that I alluded to any contracts. First, you don't allude to a man like Corby, and I suspect that he read in Gould's position about any contracts. The implication that I was the one who introduced Cooper et al

to Dunhill, I deny the fact; but as I learned later he had met with a Dunhill Vice President in March, 1967 and did business with him. When I found out he was doing business with them, I suggested that my friend the salesman get commission credit which he did, without ever writing an order as the accounts were still handled by the Vice President. In no way was I informed of what was taking place, except that I was thanked by the salesman for the commissions he was paid.

COUNTERSTATEMENT TO THE ARGUMENT

This defendant contends the assumption that he has had a fair trial. The many differences between the facts as submitted by the SEC and the facts as they have been testified to in the Hearing, and the Administrative proceeding show vast difference between the two parties. Since Judge Weinfeld heard no live witnesses, except this defendant and White; if all the testimony of mine be credited then I have supported a strong Prima Faci case here in the Lower Court. With no objection from the SEC, this defendant fails to see the conclusions as reached by the SEC. Considering the fact that Judge Mansfield reached a different conclusion upon the presentment before him, and the demeanor of the other live witnesses being available; especially since the time span between the alledged actions and the time of the hearing was within the time span of six months and not six years. This witness strongly disagrees with the statement made by the SEC that I don't deny the facts as found by Judge Weinfeld. I do disagree, and have shown by both live testimony, and by briefs that I fail to agree with the twist and turn of this fact pattern, by the SEC. I have shown where I fail to agree with the fact that I sold un-

registered securities, in addition I fail to see where these conclusions could have been found if careful study of the parts dealing with this defendant <sup>work</sup> ~~we~~ weighted and an understanding of the evidence presented by the defendant were taken as a fact pattern from beginning to end. If Judge Weinfeld could have seen the live witnesses, and the defendant had the chance to cross examine them, then I am sure that the decision would have been in favor of this defendant. Therefore I still maintain that all I have had before the Bar was a Hearing, and I have been denied a Trial. The weight of that hearing caused Judge Mansfield to deny the preliminary injunction.

If this trial were to deal with this defendant alone, I would be forced to agree that it need not be repeated. Since the hearing dealt with 40 plus parties, the burden upon this defendant to defend such a broad record is unfair, especially since it was not a trial. Therefore, the question is should have those parts of the record dealing directly been supplied in open court, and this defendant given the right to object or counter with other evidence. I am sure that in most cases using Rule 65, other witnesses were presented, and except for the defendants being called by the plaintiff, there would have been no need for a trial; if the testimony of this witness went uncredited. Therefore there would have been no need for this type of a trial, and Judge Mansfield could have concluded it in 1968.

This defendant makes no use of TRIVIA in his reasons for appeal. This argument is sound, and his base is secure. The

wait of almost 6 years for a trial is an abuse of the right to due process. In the instance of this defendant it deprived him of the right to work in the occupation of his training, and the right to build his values of his talents, without having a sword hanging, to one day drop and cause him to lose all that he worked honestly for. The SEC took my good name during September 1967 when they announced this proceeding, and they again took it in November 1968 when they announced on the Dow Jones Newsticker an Administrative hearing, which took place in 1970, and the decision was released in March, 1973. According to that decision the earliest I could have worked would have been August, 1973. In order to work, any firm good enough to hire me would have to inform them. I doubt with their record of promptness if I would be working today.

In answer to fundamental fairness, the SEC should have withdrawn this case since their own Former Chief Investigator, who drew the original complaint was no longer in a position to profess the facts of the complaint, and to defend the situation, as he along with us has been summoned by the SEC to its administrative process, and had been barred from the New York Stock Exchange for life as a member, allied member or employee of any firm. In fairness, I remind this Court that we had the opportunity to put this man on the stand as our witness, as he was in the Courtroom. After weighing the result, we thought that this move would have created a worse impression upon the lower court since he rested on the same side of the Bar. We have shown that by hurried testimony, given by three witnesses, who have either changed, included, omitted or in other ways shown that the value of their testimony was not as presented before the Hearing. We plead that the duty rests on the plaintiff to

tell the Court that they have appeared in other proceedings, dealing with the direct matter at hand. We strongly submit that if all the records were presented to Judge Weinfeld, then the fairness of duplication would not have presented the unfair burden upon this defendant. Since both sides were party to these hearings, and both sides conducted examination then there would have been no objection to such an inclusion. Deitz placed a couple of paragraphs in the record in my direct, why then not all that dealt to the facts. In review, I am sure that this is what the court attempted to do with respect to Rule 65.

The chance to recall a witness is wonderful, if the witness be available; and the difference between what he spoke almost 6 years before and what he might recall on a date long past give more credit to which testimony. For the record I deny that the SEC made this case a continuation of the Mansfield hearing as the witnesses were not in the same condition, stature or mind as they were in January 1968.

The defendant was prejudiced by the use of earlier testimony not limited to the actions of this defendant, had they been limited then this defendant might have objected, and at least the Court might have been aware of the objection. By delivery to the Chambers of the Judge, this defendant is unaware of what he read, and moreso what he dismissed from his mind after reading it. If it were circled, as to which parts the plaintiff relies upon, then the defendant might circle other parts and the battle as to what would be read would be held, and forever all might know what ground was covered. To this point in time nobody could agree what was read, but this defendant

assumes by the decision that what he said in his own defense was given little if any credit.

Footnote 21 implies that I was a party to the appeal from the preliminary injunction. I was not a party to such appeal, and I was not represented by same counsel. Preliminary relief as to me had been denied by Judge Mansfield. This defendant was under the same impression, based upon representations made by the SEC to Judge Mansfield at the remand, where he related that the SEC had more witnesses and evidence.

This defendant states that his declarations are not self serving, but in lieu of other witnesses who could testify as to the state of the defendants' thoughts and actions they should survive and support the truths of these assertions. This defendant had at the time of trial, and continues to have respect for the Court and Judge Weinfeld, and has knowledge that he is competent to distinguish between admissible and inadmissible evidence. This defendant would have liked the assurance that he had all the evidence available to him as part of the Hearing record, and from facts gathered by personal investigation is not certain that he had the exhibits even though he might have requested them. The facts which are hard to disprove is that they were sent from the Court of Appeals to the Federal Archives during November, 1972 and rested in storage till I awakened the box in April 1974. My point is that I feel a record should be complete, if we were to rely upon its completeness, and since neither the plaintiff nor the defendants checked the record that Judge Weinfeld received, neither could be assured that it was complete, and it is not expected that a Judge go looking for matter that should have been presented to him.

It should be remembered that the SEC places a lot of stress upon that Progress Report, and failing to show live witness as to what I did with it, and I showing what I did with it, it shows that if I used it as I said then I did not use it as they said.

If the Judge accepted my statement about my relationship with White, never having any dealings with him, and he stating that he never had any with me, then how could I have aided and abetted if I had no contact with White. My relationship with Cooper being social, allows no room to make me aware that I knew what he was doing, and the fact that he lived in Canada, and I in New York, and I worked in New York, contact was rather limited, only on weekends and involved his family members during most time we spent together. The record fails to show that I was active in any Canadian securities, and the fact is that I was not. Not being a broker I had no business with him, a fact the attorneys for the SEC inquired into. They did not like my answer, when I asked them if they wanted my dates phone number.

I dispute the fact pattern that Judge Weinfeld found from what I testified to. Judge Mansfield heard the same fact pattern and his result was completely opposite. I find Judge Weinfeld's insight into what took place outlandish, and I feel that the conclusions drawn were unwarranted in light of the total involvement of this defendant.

The SEC would like you to believe that this case has this defendant telling everyone to buy NARD, and neglects to state the fact that I lost more than anyone. That if the National Quotation Bureau had done its implied function

I contend that this stock would never have traded and I along with others would have had the implied protection the SEC contends it provides. My actions, thinking that this was a stock that could be bought and sold, would not have the sentence repeated that I told others to buy, and that he bought for accounts that he had discretion as repeated often in the SEC's brief. That the report which I neither authored, printed or supplied by a distribution would have never been questioned. The fact that I sought information from all sources, and maintained extensive files containing anything that was received by me, would not convict me if I received and transmitted upon request. In this case this was the extent of my involvement. The SEC would have you understand that I stood at the Corner of Wall & Broad and forced these reports upon all who past. The question is what did I do in violation of what Laws when I placed the reports in my file, and when asked for something, anything I gave them to a friend, or to help others out came back to me for the report. Was I guilty when I gave the first one to Dunhill? or did I become guilty when I transmitted at his request the other two copies? It makes no difference to me whether any exhibits were missing, the real difference is that the record was incomplete, and in VIOLATION of Rule 65, and it is not for the SEC to place any values on any evidence. That is still the function of the Judge. I offer no opinion as to the difference between a copy, and the original. I support my complaint that I did not know where the Judge got the exhibits, but if he had to go outside the record I think that he had an incomplete transcript of the Mansfield hearing, and that is outside the scope of Rule 65. If he

went that far as to go to the record of the Court of Appeals, then why did he not go to the records of the Administrative proceeding. They were also dealing with this case, and the facts were there in detail, maybe even more so. Why did not the SEC request to place them in the record under Rule 65? I never could afford that record, and was not in a position to place them as an exhibit, but I told Judge Weinfeld about the Administrative Proceeding in my testimony. The fact that the SEC placed another Progress Report before Judge Weinfeld was overlooked by me, as I thought the original complaint had one attached; there was an exhibit in the Hearing and of course in the record of the Court of Appeals. I only hope that they were not photo copies, where the photographs were never reprinted, but where much has been said about them.

Maybe the Court should review the contents of the Progress Report in light of current standards and occurrences during the past years.

Basis of Weinfeld's injunction is outrageous as this defendant having spent ten years in direct contact with the securities laws, and having never violated them. Gets meshed in a promotion through a fact pattern that was logical then, as it is now, and is given what amounts to a life sentence, as it precludes this defendant from earning a living in the Securities Industry. By Law it places a tail on this defendant, and if I ever cross a street against a light, I have violated this injunction.

To be even more practical, if I believe in the Storrs Process, which I do even more now than seven years ago, to promote this process might be a violation of the injunction. The reason behind this is even though the process is not a stock,

I would have to tell the history of the Process, and entwined with the process is the history of NARD. Seven years of waste in a period when the World is crying and cracking due to Oil. Resting in the Hills of Utah is a pilot plant, waiting for repairs, due in large measure to the harassment tactics employed by those who profess to protect. Therefore, in whatever decision will you please make mention of whether I can have anything to do with the Storrs Process, for my belief is that it offers some good to mankind.

With reference to page 28; If Judge Weinfeld found that I had not troubled to find the true facts about NARD, and I did those other things over again; distributed the report, bought the stock for others and that under the circumstances would act in the same manner. Would Judge Weinfeld please tell me how he came to these conclusions in face of the Prima Facie case that I presented in my own behalf, unchallenged by the SEC.

As I once heard a Judge tell a policeman, who arrested a man for jaywalking, after the fine was imposed of \$5-. The officer looked at the judge, and the judge asked from the officer "what should I have done, taken away his feet." I cannot question the discretion given to a judge, nor the fact that he has it; but certain I can question it. In review I received the worst punishment of all the defendants, I outlasted all, but the chairman of the Board. Being a non-broker, or dealer or registered representative; neither officer, director or control stockholder; in no way receiving or seeking compensation I was the party involved in every step of this proceeding; and made to sustain a position at an SEC administrative proceeding which had no reason to be; loss of a living for more than seven

years;from having invested ten years of hard honest work;  
and about six years of related education.

The decree issued by Judge Weinfeld in light that there  
has been no showing on the part of proclivity with  
regards this defendant and the Law,suggests the fact  
that he signed it since he believed that I had received  
notice. In fact,it was returned to the SEC,and served  
upon by this defendant,by Roger Deitz,special counsel  
employed by the SEC.

This defendant has shown that he will submit to anything  
as requested by the Court,but fights the right to a Trial,  
with the trivia to cross examine a witness,examine the  
evidence,and to offer an objection where deemed a necessity.

CONCLUSION

For the foregoing reason the judgement below should be reversed.  
Respectfully submitted,

ALFRED BLUMBERG  
Pro Se

Mailing Address :

150 Fifth Avenue,Suite 737

New York,New York 10011

November 13,1974

STATE OF NEW YORK )  
: SS:  
COUNTY OF RICHMOND )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 13 day of November, 1974 deponent served the within brief upon WILLIAM D. MORAN and GLASS & GREENBERG

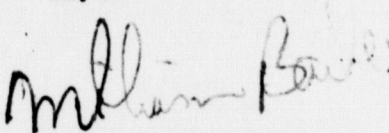
attorney(s) for SEC and defs. No. American Res. and K. Ralph Bowman

in this action, at 26 Federal Plaza, NYC 10007 and 540 Madison Ave., NYC

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
ROBERT BAILEY

Sworn to before me, this  
13 day of November, 1974

  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976